



U.S. Department of Justice

Office of Justice Programs

Washington, D.C 20531

November 15, 2017

Thomas Anderson
Commissioner
Vermont Department of Public Safety
45 State Drive
Waterbury, VT 05671

Dear Commissioner Anderson,

Your FY 2016 Byrne JAG grant award required you to comply with 8 U.S.C. § 1373. Section 1373 compliance is an ongoing requirement that the Department of Justice monitors. The Department is concerned that the following Vermont laws, policies, or practices may violate section 1373:

- Vermont Model Fair and Impartial Policing Policy.¹ Part 8.1.3 requires officers to “communicate” that they will not “report immigrants or the immigration status of victims/witnesses to the Department of Homeland Security.” The Department is concerned that this policy appears to restrict the sending of information regarding immigration status, in violation of section 1373(a). It is not the Department of Justice’s nor the Department of Homeland Security’s policy or practice to request information from state and local jurisdictions regarding the immigration status of victims or witnesses. There are, however, instances where requesting this information could be appropriate, such as where a person is both a perpetrator and a victim/witness.

¹ While this is only a model policy, the State of Vermont’s official website states the following with respect to this model policy: “Agencies and constables have until July 1, 2016, to either adopt the model policy in its entirety or ensure that its current policy contains the essential elements as identified by the Council. I should note that if an agency makes no movement at all by July 1, it will have been deemed to have adopted, and be bound by, the Council’s Model Policy.” <http://vcjtc.vermont.gov/content/model-fair-and-impartial-policing-policy>; see also 20 V.S.A. § 2366(a) (“[o]n or before July 1, 2016, every State, local, county, and municipal law enforcement agency and every constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with section 2358 of this title shall adopt a fair and impartial policing policy that includes, at a minimum, the elements of the Criminal Justice Training Council model policy”). The provisions relied on in this letter are identified as “essential elements” of the policy.

- Vermont Model Fair and Impartial Policing Policy. Part 8.3.2 provides that officers “shall utilize federal databases in attempts to establish an individual’s identity [sic] only when all other attempts to identify the person have failed.” It also provides that “contact with federal authorities made to determine an individual’s identity is restricted to the purpose of determining his or her identity.” The Department is concerned that this policy appears to restrict the sending or requesting of information regarding immigration status, in violation of section 1373(a) and (b). The Department further notes that the use of federal databases to obtain information about arrestees is a primary method for providing information to Immigration and Customs Enforcement.²

By December 8, 2017, please submit a response to this letter that addresses whether Vermont has laws, policies, or practices that violate section 1373, including those discussed above. In addition to your compliance in FY 2016, please address whether you would comply with section 1373 throughout the award period, should you receive an FY 2017 Byrne JAG grant award. To the extent Vermont laws or policies contain so called “savings clauses,” please explain in your submission the way these savings clauses are interpreted and applied, and whether these interpretations are communicated to Vermont officers or employees.

The Department has not made a final determination regarding Vermont’s compliance with section 1373. This letter does not constitute final agency action and nothing in this letter creates any right or benefit enforceable at law against the United States.

Sincerely,



Alan Hanson
Acting Assistant Attorney General

² The Department also takes note of the State of Vermont’s suggestion, in its Guidance to Vermont Cities & Towns Regarding Immigration Enforcement, that section 1373 “may not constitutionally prohibit state and local governments from maintaining confidentiality policies directly serving sovereign state interests—even if immigration status is included in the class of protected information.”